

MONTANA LEGISLATIVE HISTORY

Chapter 285 19 77

Bill H 77 S _____ Original bill & history C

H. Committee on Judiciary

Hearing Date(s) Jan 31 ✓ C

No minutes were _____ C

found regarding _____ C

action taken, _____ C

Date Out _____ C

S. Committee on Judiciary

Hearing Date(s) Mar 12 ✓ C

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_____ C

Mar 12 ✓ C

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

1 *HB* BILL NO. *77*
 2 INTRODUCED BY *Barrett Long Vincent*
 3 *By Request of admin. Code Comm.*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT FOR THE GENERAL
 5 REVISION OF THE LAWS RELATING TO ADMINISTRATIVE PROCEDURE;
 6 AMENDING SECTIONS 82-4201 THROUGH 82-4208, 82-4212, 82-4213,
 7 82-4215, 82-4216, 82-4217, 82-4220 THROUGH 82-4223, 82-4227
 8 THROUGH 82-4229, AND 82A-107, R.C.M. 1947."
 9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 82-4201, R.C.M. 1947, is amended to
 12 read as follows:

13 "82-4201. Short title. This ~~act~~ part ~~(sections 82-4201~~
 14 ~~through 82-4225)~~ shall be known and may be cited as the
 15 "Montana Administrative Procedure Act".

16 Section 2. Section 82-4202, R.C.M. 1947, is amended to
 17 read as follows:

18 "82-4202. Definitions. For purposes of this ~~act~~ part,
 19 the following definitions apply:

20 (1) "Agency" means any ~~board, bureau, commission,~~
 21 ~~department, authority or officer~~ agency, as defined in
 22 82-4227, of the state government ~~authorized by law to make~~
 23 ~~rules and to determine contested cases~~, except that the
 24 provisions of this ~~act~~ part ~~shall do~~ not apply to the
 25 following:

1 ~~(a) the legislature and any branch, committee or~~
 2 ~~officer thereof;~~

3 ~~(b) the judicial branches and any committee or officer~~
 4 ~~thereof;~~

5 ~~(c) the governor, except that an agency otherwise~~
 6 ~~covered by this act shall not be exempt because the governor~~
 7 ~~has been designated as a member thereof;~~

8 ~~(d) the state military establishment and agencies~~
 9 ~~concerned with civil defense and recovery from hostile~~
 10 ~~attacks;~~

11 ~~(e)~~ (a) the state board of pardons, except that ~~said~~
 12 ~~the~~ board shall be subject to the requirements of ~~section 3~~
 13 ~~[82-4203] and 5 [82-4205] of this act~~ and its rules shall be
 14 published in the Montana administrative code and register;

15 ~~(f)~~ (b) the supervision and administration of any
 16 penal, ~~mental, medical or eleemosynary~~ institution with
 17 regard to the ~~admission, release,~~ institutional supervision,
 18 custody, control, care, or treatment of ~~inmates,~~ prisoners
 19 or patients;

20 ~~(g)~~ (c) the ~~administration and management of~~
 21 ~~educational institutions;~~ the board of regents and the
 22 Montana university system;

23 ~~(h)~~ (d) the financing, construction, and maintenance of
 24 public works.

25 (2) "Rule" means each agency regulation, standard, or

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statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. Substantive rules are either legislative rules, which if adopted in accordance with this part and under expressly delegated authority have the force of law and when not so adopted are invalid, or adjective or interpretive rules, which may be adopted in accordance with this part and under express or implied authority to codify an interpretation of a statute although such interpretation lacks the force of law. The term includes the amendment or repeal of a prior rule, but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) declaratory rulings issued pursuant to ~~section 18 [82-4218]~~ of this act;

~~(c) intra-agency memoranda;~~

~~(d)(c)~~ rules relating to the use of public works, facilities, streets, and highways, when the substance of such rules is indicated to the public by means of signs or signals;

~~(e)(d)~~ seasonal rules adopted annually relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of such rules, and rules

adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

~~(f)(e)~~ rules relating to personnel standards, job classifications or salary ranges for agency employees, implementing the state personnel classification plan, the state wage and salary plan, or the state wide budgeting and accounting system;

~~(g)(f)~~ uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with ~~section 10 [82-4210]~~ of this act 82-4205 and shall be published in the Montana administrative code and register.

(3) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes, but is not restricted to, rate making, price fixing, and licensing.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law, but does not include a license required solely for revenue purposes.

(5) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of

1 a license.

2 (6) "Party" means any person or agency named or
3 admitted as a party, or properly seeking and entitled as of
4 right to be admitted as a party; but nothing herein shall be
5 construed to prevent an agency from admitting any person or
6 agency as a party for limited purposes.

7 (7) "Person" means any individual, partnership,
8 corporation, association, governmental subdivision, or
9 public organization of any character other than an agency."

10 Section 3. Section 82-4203, R.C.M. 1947, is amended to
11 read as follows:

12 "82-4203. Rules describing agency organization and
13 procedures -- public inspection of rules -- model rules.

14 (1) In addition to other rule-making requirements imposed
15 by law, each agency shall:

16 (a) ~~Adopt~~ adopt as a rule a description of its
17 organization, stating the general course and method of its
18 operations and the methods whereby the public may obtain
19 information or make submissions or requests. The notice and
20 hearing requirements contained in ~~section~~ 82-4204 do not
21 apply to adoption of a rule relating to a description of its
22 organization.

23 (b) ~~Adopt~~ adopt rules of practice, not inconsistent
24 with statutory provisions, setting forth the nature and
25 requirements of all formal and informal procedures

1 available, including a description of all forms and
2 instructions used by the agency;1

3 (c) ~~Make~~ make available for public inspection all
4 rules and all other written statements of policy or
5 interpretations formulated, adopted, or used by the agency
6 in the discharge of its functions;1

7 (d) ~~Upon~~ upon request of any person or agency, provide
8 a copy of any rule. Unless otherwise provided by statute, an
9 agency may require the payment of the cost of providing such
10 copies.

11 (2) No agency rule ~~shall be~~ is valid or effective
12 against any person or party whose rights have been
13 substantially prejudiced by an agency's failure to comply
14 with the public inspection requirement herein.

15 (3) The attorney general shall prepare, ~~as soon as is~~
16 ~~practicable after the passage of this act,~~ a model form for
17 a rule describing the organization of agencies and model
18 rules of practice for agencies to use as a guide in
19 fulfilling the requirements of ~~section~~ 82-4203(1). The
20 attorney general shall add to, amend, or revise the model
21 rules from time to time as he ~~shall deem~~ considers necessary
22 for the proper guidance of agencies. The model rules, and
23 additions, amendments, or revisions thereto, shall be
24 appropriate for the use of as many agencies as is
25 practicable and shall be filed with the secretary of state

1 and provided to any agency upon request. The adoption by an
2 agency of all or part of the model rules ~~shall~~ does not
3 relieve the agency from following the rule-making procedures
4 required by this act part."

5 Section 4. Section 82-4203.1, R.C.M. 1947, is amended
6 to read as follows:

7 "82-4203.1. Legislative review of rules. (1) The
8 ~~secretary of state shall, on the date the legislature~~
9 ~~convenes in regular session in 1974, transmit to both the~~
10 ~~senate and house of representatives one (1) copy of all~~
11 ~~rules in the Montana administrative code, not including~~
12 ~~superseded or repealed rules.~~

13 ~~(2) The secretary of state shall, on the date the~~
14 ~~legislature convenes in each regular session after 1974,~~
15 ~~transmit to both the senate and house of representatives one~~
16 ~~(1) copy of all rules, which are in the Montana~~
17 ~~administrative code, adopted or amended by agencies since~~
18 ~~the convening of the previous regular session.~~

19 ~~(3) The legislature may, by joint resolution, repeal any~~
20 ~~rule in the Montana administrative code. If a rule is~~
21 ~~repealed, the legislature shall, in the joint resolution,~~
22 ~~state its objections to the repealed rule. If an agency~~
23 ~~adopts a new rule to replace the repealed rule, the agency~~
24 ~~shall adopt the new rule in accordance with the objections~~
25 ~~stated by the legislature in the joint resolution. If the~~

1 legislature does not repeal a rule filed with it before the
2 adjournment of that regular session, the rule remains valid.

3 ~~(4)~~ (2) The legislature may also, by joint resolution,
4 direct a change to be made in any rule in the Montana
5 administrative code or direct the adoption of an additional
6 rule. If a change in any rule or the adoption of an
7 additional rule is directed to be made, the legislature
8 shall, in the joint resolution, state the nature of the
9 change or the additional rule to be made, and its reasons
10 therefor. The agency shall, in the manner provided in the
11 Montana Administrative Procedure Act, adopt a new rule in
12 accordance with the legislative direction.

13 ~~(5)~~ (3) Rules made by agencies, and changes in rules
14 directed by the legislature, under subsection ~~(4)~~ (2) of this
15 section, shall conform and be pursuant to statutory
16 authority."

17 Section 5. Section 82-4203.2, R.C.M. 1947, is amended
18 to read as follows:

19 "82-4203.2. Administrative code committee —
20 appointment and term of members — officers. The
21 administrative code committee consists of four ~~(4)~~ members
22 of the senate and four ~~(4)~~ members of the house of
23 representatives appointed before the ~~sixtieth~~ 60th
24 legislative day of the regular session in the same manner as
25 standing committees of the respective houses are appointed.

1 A vacancy on the committee occurring when the legislature is
 2 not in session shall be filled by the selection of a member
 3 of the legislature by the remaining members of the
 4 committee. No more than two ~~(2)~~ of the appointees of each
 5 house may be members of the same political party. A member
 6 of the committee shall serve until his term of office as a
 7 legislator ends or until the end of the ~~sixtieth~~ 60th
 8 legislative day of the session of the biennium following his
 9 appointment or until his successor is appointed, whichever
 10 occurs first. The committee shall elect one ~~(1)~~ of its
 11 members as chairman and such other officers as it ~~deems~~
 12 considers necessary."

13 Section 6. Section 82-4203.3, R.C.M. 1947, is amended
 14 to read as follows:

15 "82-4203.3. Meetings. The committee shall meet as
 16 often as may be necessary, during and between legislative
 17 sessions. Committee members shall be reimbursed from the
 18 appropriation to the legislative council for their ~~actual~~
 19 ~~and necessary~~ expenses incurred as a result of interim
 20 meetings, including mileage as allowed under 59-501, actual
 21 expenses as allowed under 59-538 and 59-539, and paid
 22 compensation as provided by law for interim standing
 23 committees."

24 Section 7. Section 82-4203.4, R.C.M. 1947, is amended
 25 to read as follows:

1 "82-4203.4. Appointment of employees and consultants.
 2 The administrative code committee may ~~appoint~~ retain
 3 whatever employees, consultants, or counsel as are necessary
 4 to carry out the provisions of this ~~act~~ part and to advise
 5 the publisher in relation to the text and legal authority of
 6 the material published in the register or the code, within
 7 the limitations of legislative appropriations."

8 Section 8. Section 82-4203.5, R.C.M. 1947, is amended
 9 to read as follows:

10 "82-4203.5. Powers of the committee. (1) The committee
 11 shall review all proposed rules ~~referred to it under section~~
 12 82-4204 filed with the administrative code commissioner and
 13 may:

14 (a) prepare written recommendations for the adoption,
 15 amendment, or rejection of a rule and submit those
 16 recommendations to the department proposing the rule when a
 17 rule-making hearing will not be held in accordance with the
 18 provisions of ~~section~~ 82-4204;

19 (b) prepare recommendations for the adoption,
 20 amendment, or rejection of a rule and submit oral or written
 21 testimony at a rule-making hearing; or

22 (c) ~~request~~ require that a rule-making hearing be held
 23 in accordance with the provision of ~~section~~ 82-4204.

24 (2) The committee shall prepare a report to the
 25 legislature at least once each biennium and may recommend

1 amendments to the Montana Administrative Procedure Act or
 2 the repeal, amendment, or adoption of a rule as provided in
 3 ~~section~~ 82-4203.1."

4 Section 9. There is a new R.C.M. section, to be
 5 codified within the Montana Administrative Procedure Act,
 6 that reads as follows:

7 Administrative code commissioner — appointment,
 8 duties, and authority. (1) There is created within the
 9 office of secretary of state the office of administrative
 10 code commissioner.

11 (2) The administrative code commissioner shall be
 12 appointed by and subject to the general supervision and
 13 policy of the secretary of state.

14 (3) The administrative code commissioner may prescribe
 15 a format, style, and arrangement for rules which are filed
 16 pursuant to this part and may refuse to accept the filing of
 17 any rule that is not in compliance therewith. The
 18 commission shall keep and maintain a permanent register of
 19 all rules filed (including superseded and repealed rules)
 20 which shall be open to public inspection and shall provide
 21 copies of any rule upon request of any person or agency.
 22 Unless otherwise provided by statute, the administrative
 23 code commissioner may require the payment of the cost of
 24 providing such copies.

25 (4) The administrative code commissioner shall publish

1 all notices, rules, and interpretations filed with him, at
 2 least once a month or as directed by the administrative code
 3 committee, in a publication called the Montana
 4 administrative code register. He shall send the register
 5 without charge to each person listed in 82-4206(5) and to
 6 each member of the legislature requesting the same. He
 7 shall send the register to any other person who pays a
 8 subscription fee which he shall fix in consultation with the
 9 administrative code committee.

10 (5) The administrative code commissioner shall deposit
 11 all fees he collects in the general fund.

12 (6) The administrative code commissioner may charge
 13 agencies a filing fee for material to be published in the
 14 code or register based on an estimated cost of printing,
 15 which he shall fix in consultation with the administrative
 16 code committee.

17 Section 10. Section 82-4204, R.C.M. 1947, is amended
 18 to read as follows:

19 "82-4204. Adoption, — amendment, or repeal of rules
 20 — emergency rules. (1) Prior to the adoption, amendment, or
 21 repeal of any rule, the agency shall:

22 (a) ~~Give~~ give written notice of its intended action.
 23 The notice shall include a statement of either the terms or
 24 substance of the intended action or a description of the
 25 subjects and issues involved, rationale for the intended

1 ~~action~~, and the time when, place where, and manner in which
 2 interested persons may present their views thereon. The
 3 notice shall be filed with the ~~secretary of state~~
 4 administrative code commissioner for publication in the
 5 Montana administrative register as provided in ~~section~~
 6 82-4206(2) and mailed to persons who have made timely
 7 requests to the agency for advance notice of its rule-making
 8 proceedings. The notice shall be published and mailed at
 9 least ~~twenty (20)~~ 30 days in advance of the agency's
 10 intended action. If any statute ~~shall provide~~ provides for a
 11 different method of publication, the affected agency shall
 12 comply with the statute in addition to the requirements
 13 contained herein. However, in no case ~~shall~~ may the notice
 14 period be less than ~~twenty (20)~~ 30 days or more than 6
 15 months.

16 (b) ~~Afford~~ afford interested persons at least 20 days'
 17 notice of a hearing and fourteen (14) ~~fourteen (14)~~ 28 days to submit
 18 data, views, or arguments, orally or in writing. In the case
 19 of substantive rules, opportunity for oral hearing shall be
 20 granted if requested by either ~~ten per cent (10%)~~ or
 21 ~~twenty-five (25%)~~ of the persons who will be directly
 22 affected by the proposed rule, by a governmental subdivision
 23 or agency, or by an association having not less than
 24 ~~twenty-five (25)~~ members who will be directly affected. An
 25 ~~interested person may file a written request with the agency~~

1 ~~to extend a hearing date up to twenty (20) days~~ agency may
 2 continue a hearing date for cause. Contested case procedures
 3 need not be followed in hearings held pursuant to this
 4 section. ~~Where~~ If a hearing is otherwise required by
 5 statute, nothing herein ~~shall be deemed to alter~~ alters that
 6 requirement. The agency shall consider fully written and
 7 oral submissions respecting the proposed rule. Upon adoption
 8 of a rule, an agency, ~~if requested to do so by an interested~~
 9 ~~person either prior to adoption or within thirty (30) days~~
 10 ~~thereafter~~, shall issue a concise statement of the principal
 11 reasons for and against its adoption, incorporating therein
 12 its reasons for overruling the considerations urged against
 13 its adoption.

14 ~~(c) Refer each rule proposed to be adopted, following~~
 15 ~~compliance with paragraphs (a) and (b), to the~~
 16 ~~administrative code committee of the legislature.~~

17 (2) If an agency finds that an imminent peril to the
 18 public health, safety, or welfare requires adoption of a
 19 rule upon fewer than ~~twenty (20)~~ days' notice and states in
 20 writing its reasons for that finding, it may proceed,
 21 without prior notice or hearing or upon any abbreviated
 22 notice, and hearing that it finds practicable, to adopt an
 23 emergency rule. The rule may be effective for a period not
 24 longer than ~~one hundred and twenty (120)~~ days, but the
 25 adoption of an identical rule under subsections (1)(a) and

(1) (b) of this section is not precluded. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare ~~shall be~~ is subject to judicial review.

(3) No rule ~~adopted after the effective date of this act shall be~~ is valid unless adopted in substantial compliance with subsections (1) ~~and~~ or (2) of this section.

(4) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule making. The powers of the committees shall be advisory only. Nothing herein shall relieve the agency from following rule-making procedures required by this ~~act~~ part.

(5) Rules ~~shall~~ may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language. Each rule shall include a citation of authority pursuant to which it, or any part thereof, is adopted.

(6) Each agency shall at least annually review its

rules to determine if any new rule should be adopted or any existing rule should be modified or repealed."

Section 11. There is a new R.C.M. section to be codified within the Montana Administrative Procedure Act, that reads as follows:

Authority for rules. (1) Except as provided in 82-4203, nothing in this part confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any rule. To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(2) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

Section 12. Section 82-4205, R.C.M. 1947, is amended to read as follows:

"82-4205. Filing of rules — effective date of rules. ~~(1) On or before the 60th day following the effective date of this act, each agency shall file with the secretary of state a certified copy of each rule adopted by it on or~~

~~before the effective date of this act and remaining in effect. Any rule not so filed shall be deemed to have been abrogated by the agency and shall be void and of no effect.~~

(2) Each agency shall file with the ~~secretary of state~~ administrative code commissioner a ~~certified~~ copy of each rule adopted by it ~~subsequent to the effective date of this act~~. Each rule shall become effective ~~ten (10) days~~ after publication in the Montana administrative register ~~or code~~ as provided in ~~section 6 [82-4206] of this act~~, except that:

~~(a) (1) If~~ if a later date is required by statute or specified in the rule, the later date shall be the effective date;

~~(b) (2) Subject~~ subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the ~~secretary of state, administrative code commissioner~~ or at a stated date ~~less than ten (10) days~~ following publication in the Montana administrative ~~code or~~ registry if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them.

~~(3) The secretary of state may prescribe a format,~~

~~style and arrangement for rules which are filed pursuant to this act and may refuse to accept the filing of any rule that is not in substantial compliance therewith. He shall keep and maintain a permanent register of all rules filed (including superseded and repealed rules), which shall be open to public inspection, and shall provide copies of any rule upon request of any person or agency. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing such copies."~~

Section 13. Section 82-4206, R.C.M. 1947, is amended to read as follows:

"82-4206. Publication and distribution of rules and notices. (1) The ~~secretary of state~~ administrative code commissioner shall, ~~as soon as is practicable after the effective date of this act~~, compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish all rules filed pursuant to this act part in a publication which shall be known as the ~~Montana administrative code~~ administrative rules of Montana (herein referred to as the code). ~~The code shall be printed or otherwise duplicated, in looseleaf form.~~ The ~~secretary of state~~ administrative code commissioner shall supplement, revise, and publish the code, or any part thereof, as often as he ~~deems~~ considers necessary. He may include such

editorial notes, cross references, and other matter as he and the administrative code committee consider desirable or advantageous. He shall publish supplements to the code at such times and in such form as he considers appropriate.

(2) The ~~secretary of state~~ administrative code committee shall each month or at more frequent intervals compile and publish the Montana administrative register (herein referred to as the register). The register shall contain ~~two~~ (2) ~~three~~ sections, a rules section, and a notice section, and an interpretation section.

(a) The rules section of the register shall contain all rules filed ~~with the secretary of state~~ since the compilation and publication of the preceding issue of the register, ~~and in the case of the first issue, since the effective date of this act, except that nothing herein shall require that rules filed pursuant to section 5 (1) [82-4205 (1)] be published in the register. This section of the register shall be printed or duplicated in the same style as the code and shall be set up so as to permit changes to be inserted as pages in the code in lieu of the pages containing superseded material and to permit additions to the code together with the concise statement of reasons required under 82-4204(1)(b).~~

(b) The notice section of the register shall contain all rule-making notices filed with the ~~secretary of state~~

administrative code commissioner pursuant to ~~section 4~~ [82-4204] ~~of this act~~ since the compilation and publication of the preceding register, ~~and in the case of the first issue of the register, since the effective date of this act. This section shall be printed or duplicated in such manner as to make it easily distinguishable from the rules section of the register and so that separate copies of the notice section can be provided to any person upon request to the secretary of state. The secretary of state may require the payment of the cost of providing such copies.~~

(c) The interpretation section of the register shall contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

~~(d)~~ (d) Each issue of the register shall contain a title page with the name "Montana administrative register," the issue number and date of the register, and a table of contents. Each page of the register shall contain the issue number and date of the register of which it is a part. The ~~secretary of state~~ administrative code commissioner may include ~~in~~ with the register instructions or information to help the user in ~~correctly making insertions or deletions in the code and to keep the code current relating the register to the Montana administrative code.~~

(3) The ~~secretary of state~~ administrative code

1 commissioner, with the consent of the adopting agency, may
 2 omit from the code or register any rule the publication of
 3 which would be unduly cumbersome, expensive, or otherwise
 4 inexpedient, if the rule ~~is printed or duplicated form is~~
 5 merely incorporates by reference a model code, federal
 6 agency rule, or like publication made available on
 7 application to the agency, and if the code or register
 8 contains a notice stating the citation and general subject
 9 matter of the omitted rule and stating how a copy may be
 10 obtained.

11 (4) The code shall be arranged, indexed, and printed
 12 or duplicated in such manner as to permit separate
 13 publication of portions thereof relating to individual
 14 agencies. An agency may make arrangements with the ~~secretary~~
 15 ~~of state~~ administrative code commissioner for the printing
 16 of as many copies of such separate publications as it may
 17 require. The cost of any such separate publications shall be
 18 paid by the agency.

19 (5) The ~~secretary of state~~ administrative code
 20 commissioner shall distribute copies of the code, and
 21 supplements or revisions thereto ~~and the register~~ without
 22 charge to the following:

- 23 (a) Attorney attorney general, one (1) copy;
 24 (b) Clerk clerk of each court of record of this state,
 25 one (1) copy;

1 (c) Clerk clerk of United States district court for
 2 the district of Montana, one (1) copy;

3 (d) Clerk clerk of United States court of appeals for
 4 the ninth circuit, one (1) copy;

5 (e) ~~Each each~~ county clerk of this state, for use of
 6 county officials and the public, one (1) copy, which may
 7 be maintained in a public library in the county seat or in
 8 the county offices;

9 (f) State state law library, one (1) copy;

10 (g) State state historical society, one (1) copy;

11 (h) ~~Each each~~ unit of the ~~university of Montana~~
 12 Montana university system, one (1) copy;

13 (i) Law law library of the university of Montana, one
 14 (1) copy;

15 (j) Montana legislative council, three (3) copies;

16 (k) Library library of congress, one (1) copy;

17 (l) State library, one copy, State law library, for
 18 such exchanges as it may establish with libraries of other
 19 states, not to exceed fifty (50) copies;

20 Law library of the university of Montana, for such
 21 exchanges as it may establish with institutions of higher
 22 education in other states, not to exceed fifty (50) copies;

23 (6) The ~~secretary of state~~ administrative code
 24 commissioner, clerk of each court of record in the state,
 25 clerk of each county in the state, and the librarians for

the state law library and the university of Montana law library shall maintain a complete, current set of the code, including supplements or revisions thereto ~~and additions or changes published in the register~~. Such persons shall also maintain a ~~file of rule-making notices published in the~~ register issues published during the preceding ~~two~~ (2) years. The ~~secretary of state~~ administrative code commissioner shall also maintain a permanent ~~register of rule-making notices set of the registers~~.

~~(6)(7)~~ The ~~secretary of state~~ administrative code commissioner shall make copies of and subscriptions to the code, and supplements or revisions thereto and the register available to any person at prices fixed to cover publication and mailing costs.

~~(7)(8)~~ The ~~secretary of state~~ administrative code commissioner shall determine the cost of supplying copies of the code, and supplements or revisions thereto and the register. Such cost shall be the approximate cost of printing or duplicating and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of the code, and supplements or revisions thereto and the register.

~~(8)~~ All fees collected by the secretary of state shall ~~be deposited to the general fund.~~

Section 14. Section 82-4207, R.C.M. 1947, is amended to read as follows:

"82-4207. Petition for adoption of rules. An interested person or, when the legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within ~~sixty~~ (60) days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with ~~section~~ 82-4204."

Section 15. Section 82-4208, R.C.M. 1947, is amended to read as follows:

"82-4208. Judicial notice of rules. The courts shall take judicial notice of any rule filed and published under the provisions of this ~~act~~ part."

Section 16. Section 82-4212, R.C.M. 1947, is amended to read as follows:

"82-4212. Examination of evidence by agency — proposed orders. When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if

1 adverse to a party to the proceeding other than the agency
 2 itself, ~~shall~~ may not be made until a proposal for decision
 3 is served upon the parties and an opportunity is afforded to
 4 each party adversely affected to file exceptions and present
 5 briefs and oral argument to the officials who are to render
 6 the decision. The proposal for decision shall contain a
 7 statement of the reasons therefor and of each issue of fact
 8 or law necessary to the proposed decision, prepared by the
 9 person who conducted the hearing ~~or one who has read the~~
 10 ~~record~~ unless he becomes unavailable to the agency. If the
 11 person who conducted the hearing becomes unavailable to the
 12 agency, proposed findings of fact may be prepared by a
 13 person who has read the record only if the demeanor of
 14 witnesses is considered immaterial by all parties. The
 15 parties may waive compliance with this section by written
 16 stipulation."

17 Section 17. Section 82-4213, R.C.M. 1947, is amended
 18 to read as follows:

19 "82-4213. Final orders — notification. (1) A final
 20 decision or order adverse to a party in a contested case
 21 shall be in writing or stated in the record. A final
 22 decision shall include findings of fact and conclusions of
 23 law, separately stated. Findings of fact, if set forth in
 24 statutory language, shall be accompanied by a concise and
 25 explicit statement of the underlying facts supporting the

1 findings. If, in accordance with agency rules, a party
 2 submitted proposed findings of fact, the decision shall
 3 include a ruling upon each proposed finding. Parties shall
 4 be notified either personally or by mail of any decision or
 5 order. Upon request, a copy of the decision or order shall
 6 be delivered or mailed forthwith to each party and to his
 7 attorney of record. Each conclusion of law shall be
 8 supported by authority or by a reasoned opinion.

9 (2) Each agency shall index and make available for
 10 public inspection all final decisions and orders, including
 11 declaratory rulings under ~~section 18 [82-4218], issued after~~
 12 ~~the effective date of this act.~~ No such agency decision or
 13 order ~~shall be~~ is valid or effective against any person or
 14 party, nor may it be invoked by the agency for any purpose,
 15 until it has been made available for public inspection as
 16 herein required. This provision is not applicable in favor
 17 of any person or party who has actual knowledge thereof or
 18 when a state statute or federal statute or regulation
 19 prohibits public disclosure of the contents of a decision or
 20 order."

21 Section 18. Section 82-4215, R.C.M. 1947, is amended
 22 to read as follows:

23 "82-4215. Licenses. (1) When the grant, denial,
 24 renewal, revocation, suspension, annulment, withdrawal,
 25 limitation, or amendment of a license is required by law to

1 be preceded by notice and opportunity⁴ for hearing, the
2 provisions of this ~~act~~ part concerning contested cases
3 apply.

4 (2) When a licensee has made timely and sufficient
5 application for the renewal of a license or a new license
6 with reference to any activity of a continuing nature, the
7 existing license does not expire until the application has
8 been finally determined by the agency, and, in case the
9 application is denied or the terms of the new license
10 limited, until the last day for seeking review of the agency
11 order or a later date fixed by order of the reviewing court.

12 (3) No revocation, suspension, annulment, withdrawal,
13 or amendment of any license is lawful unless, prior to the
14 institution of agency proceedings, the agency gave notice by
15 mail to the licensee of facts or conduct which warrant the
16 intended action, and the licensee was given an opportunity
17 to show compliance with all lawful requirements for the
18 retention of the license. If the agency finds that public
19 health, safety, or welfare imperatively requires emergency
20 action, and incorporates a finding to that effect in its
21 order, summary suspension of a license may be ordered
22 pending proceedings for revocation or other action. These
23 proceedings shall be promptly instituted and determined."

24 Section 19. Section 82-4216, R.C.M. 1947, is amended
25 to read as follows:

1 "82-4216. Judicial review of contested cases. (1) (a)
2 A person who has exhausted all administrative remedies
3 available within the agency and who is aggrieved by a final
4 decision in a contested case is entitled to judicial review
5 under this ~~act~~ part. This section does not limit utilization
6 of or the scope of judicial review available under other
7 means of review, redress, relief, or trial de novo provided
8 by statute. A preliminary, procedural, or intermediate
9 agency action or ruling is immediately reviewable if review
10 of the final agency decision would not provide an adequate
11 remedy.

12 (b) A party who proceeds before an agency under the
13 terms of a particular statute shall not be precluded from
14 questioning the validity of that statute on judicial review,
15 but such party may not raise any other question not raised
16 before the agency, unless it is shown to the satisfaction of
17 the court that there was good cause for failure to raise the
18 question before the agency.

19 (2) (a) Proceedings for review shall be instituted by
20 filing a petition in district court within ~~thirty~~ (30) days
21 after service of the final decision of the agency, or if a
22 rehearing is requested, within ~~thirty~~ (30) days after the
23 decision thereon. Except as otherwise provided by statute,
24 the petition shall be filed in the district court for the
25 county where the petitioner resides or has his principal

1 place of business, or where the agency maintains its
2 principal office. Copies of the petition shall be promptly
3 served upon the agency and all parties of record.

4 (b) The petition shall include a concise statement of
5 the facts upon which jurisdiction and venue are based, a
6 statement of the manner in which the petitioner is
7 aggrieved, and the ground or grounds specified in subsection
8 [7] of this section upon which the petitioner contends he is
9 entitled to relief. The petition shall demand the relief to
10 which the petitioner believes he is entitled, and the demand
11 for relief may be in the alternative.

12 (3) Unless otherwise provided by statute, the filing
13 of the petition shall not stay enforcement of the agency's
14 decision. The agency may grant, or the reviewing court may
15 order, a stay upon terms which it ~~deems~~ considers proper.

16 (4) Within ~~thirty~~ (30) days after the service of the
17 petition, or within further time allowed by the court, the
18 agency shall transmit to the reviewing court the original or
19 a certified copy of the entire record of the proceeding
20 under review. By stipulation of all parties to the review
21 proceedings, the record may be shortened. A party
22 unreasonably refusing to stipulate to limit the record may
23 be taxed by the court for the additional costs. The court
24 may require or permit subsequent corrections or additions to
25 the record.

1 (5) If, before the date set for hearing, application
2 is made to the court for leave to present additional
3 evidence, and it is shown to the satisfaction of the court
4 that the additional evidence is material and that there were
5 good reasons for failure to present it in the proceeding
6 before the agency, the court may order that the additional
7 evidence be taken before the agency upon conditions
8 determined by the court. The agency may modify its findings
9 and decision by reason of the additional evidence and shall
10 file that evidence and any modifications, new findings, or
11 decisions with the reviewing court.

12 (6) The review shall be conducted by the court without
13 a jury and shall be confined to the record. In cases of
14 alleged irregularities in procedure before the agency, not
15 shown in the record, proof thereof may be taken in the
16 court. The court, upon request, shall hear oral argument and
17 receive written briefs.

18 (7) The court ~~shall~~ may not substitute its judgment
19 for that of the agency as to the weight of the evidence on
20 questions of fact. The court may affirm the decision of the
21 agency or remand the case for further proceedings. The court
22 may reverse or modify the decision if substantial rights of
23 the appellant have been prejudiced because the
24 administrative findings, inferences, conclusions, or
25 decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(g) because findings of fact, upon issues essential to the decision, were not made although requested."

Section 20. Section 82-4217, R.C.M. 1947, is amended to read as follows:

"82-4217. Appeals. An aggrieved party may obtain review of a final judgment of a district court under this ~~act~~ part by appeal to the supreme court within ~~sixty~~ sixty days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process;

(1) ~~If~~ if appeal is taken from a judgment of the district court affirming an agency decision, the agency

decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for ~~twenty~~ twenty days from the date of filing of the notice;

(2) ~~If~~ if appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise."

Section 21. Section 82-4220, R.C.M. 1947, is amended to read as follows:

"82-4220. Subpoenas and enforcement — compelling testimony. (1) An agency conducting any proceeding subject to this ~~act~~ part shall have the power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers, documents, and other objects as may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may, and upon request of any party appearing in a contested case shall, issue subpoenas for witnesses or subpoenas duces tecum. The method for service of subpoenas, witness fees, and mileage shall be the same as required in civil actions in the district courts of the state. Except as otherwise provided

1 by statute, witness fees and mileage shall be paid by the
2 party at whose request the subpoena was issued.

3 (2) In case of disobedience of any subpoena issued and
4 served under this section or of the refusal of any witness
5 to testify as to any material matter with regard to which he
6 may be interrogated in a proceeding before the agency, the
7 agency may apply to any district court in the state for an
8 order to compel compliance with the subpoena or the giving
9 of testimony. If the agency fails or refuses to seek
10 enforcement of a subpoena issued at the request of a party,
11 or to compel the giving of testimony ~~deemed~~ considered
12 material by a party, the party may make such application.
13 The court shall hear the matter as expeditiously as
14 possible. If the disobedience or refusal is found to be
15 unjustified, the court shall enter an order requiring
16 compliance. Disobedience of such order shall be punishable
17 by contempt of court in the same manner and by the same
18 procedures as is provided for like conduct committed in the
19 course of civil actions in district courts. If another
20 method of subpoena enforcement or compelling testimony is
21 provided by statute, it may be used as an alternative to the
22 method provided for in this section.

23 (3) Each agency shall provide in its rules of practice
24 for discovery prior to a contested case hearing, unless the
25 applicable statute provides for a trial de novo on appeal to

1 the district court."

2 Section 22. Section 82-4221, R.C.M. 1947, is amended
3 to read as follows:

4 "82-4221. Representation. Any person compelled to
5 appear in person or who voluntarily appears before any
6 agency or representative thereof shall be accorded the right
7 to be accompanied, represented, and advised by counsel. In a
8 proceeding before an agency, every party shall be accorded
9 the right to appear in person or by or with counsel but this
10 ~~act part~~ shall not be construed as requiring an agency to
11 furnish counsel to any such person."

12 Section 23. Section 82-4222, R.C.M. 1947, is amended
13 to read as follows:

14 "82-4222. Service. Except where a statute expressly
15 provides to the contrary, service in all agency proceedings
16 subject to the provisions of this ~~act part~~ and in
17 proceedings for judicial review thereof, shall be as
18 prescribed for civil actions in the district courts."

19 Section 24. Section 82-4223, R.C.M. 1947, is amended
20 to read as follows:

21 "82-4223. Construction and effect. Nothing in this ~~act~~
22 ~~part~~ shall be ~~deemed~~ considered to limit or repeal
23 requirements imposed by statute or otherwise recognized law.
24 No subsequent legislation shall be ~~deemed~~ considered to
25 supersede or modify any provision of this ~~act part~~, whether

1 by implication or otherwise, except to the extent that such
2 legislation shall do so expressly."

3 Section 25. Section 82-4227, R.C.M. 1947, is amended
4 to read as follows:

5 "82-4227. Definitions. As used in this act chapter:

6 (1) "~~Agency~~ agency" means any board, bureau,
7 commission, department, authority, or officer of the state
8 or local government authorized by law to make rules,
9 determine contested cases, or enter into contracts except:

10 (a) the legislature and any branch, committee, or
11 officer thereof;

12 (b) the judicial branches and any committee or officer
13 thereof;

14 (c) the governor, except that an agency is not exempt
15 because the governor has been designated as a member
16 thereof; or

17 (d) the state military establishment and agencies
18 concerned with civil defense and recovery from hostile
19 attack.

20 (2) "~~Rule~~ rule" means any agency regulation, standard,
21 or statement of general applicability that implements,
22 interprets, or prescribes law or policy or describes the
23 organization, procedures, or practice requirements of any
24 agency. The term includes the amendment or repeal of a
25 prior rule, but does not include:

1 (a) statements concerning only the internal management
2 of an agency and not affecting private rights or procedures
3 available to the public;

4 (b) declaratory rulings as to the applicability of any
5 statutory provision or of any rule;

6 (c) ~~intra-agency~~ intraagency memoranda.

7 (3) "agency action" means the whole or a part of an
8 agency rule, license, order, or contract or the equivalent
9 or denial thereof."

10 Section 26. Section 82-4228, R.C.M. 1947, is amended
11 to read as follows:

12 "82-4228. Agency requirements. (1) Each agency shall
13 develop procedures for permitting and encouraging the public
14 to participate in agency decisions that are of significant
15 interest to the public. The procedures shall assure
16 adequate notice and assist public participation before a
17 ~~final decision is made on the adoption of a rule or policy,~~
18 ~~awarding a contract, granting or denying a permit, license~~
19 ~~or change of rate~~ agency action is taken that is of
20 significant interest to the public.

21 (2) An agency shall be ~~deemed~~ considered to have
22 complied with the notice provisions of this ~~act~~ section if:

23 (a) an environmental impact statement is prepared and
24 distributed as required by the Montana Environmental Policy
25 Act, Title 69, chapter 65;

(b) a proceeding is held as required by the Montana Administrative Procedure Act, ~~Title 82, chapter 42;~~

(c) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(d) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision prior to a final decision on a matter.

(3) Procedures for assisting public participation shall include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

(4) The provisions of this ~~act~~ section do not apply to:

(a) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;

(b) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or

(c) a decision involving no more than a ministerial act.

(5) Each agency shall adopt guidelines for its programs, which guidelines shall provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) of this section. These guidelines shall be adopted as rules and published in a manner which may be provided to a member of the public upon request."

Section 27. Section 82-4229, R.C.M. 1947, is amended to read as follows:

"82-4229. Enforcement. The district courts of the state have jurisdiction to set aside an agency decision under ~~this act~~ 82-4228 upon petition of any person whose rights have been prejudiced, made within ~~thirty~~ thirty days of the date of the decision."

Section 28. Section 82A-107, R.C.M. 1947, is amended to read as follows:

"82A-107. Duties and powers of department heads. (1) Except as otherwise provided by law, each department head shall:

(a) ~~Supervise~~ supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department by this title or other law;

(b) ~~Establish~~ establish the policy to be followed by the department and employees;

(c) ~~Compile~~ compile and submit reports and budgets for

the department as required by law or requested by the governor;

(d) ~~Provide~~ provide the governor with any information that he requests at any time on the operation of the department;

(e) ~~Represent~~ represent the department in communications with the governor;

(f) ~~Prescribe~~ prescribe rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices, and the governor may not prescribe rules for them. The rules described in this subsection are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public. This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative Procedure Act.

(g) ~~Subject~~ subject to the approval of the governor, establish the internal organizational structure of the department, and allocate the functions of the department to

units to promote the economic and efficient administration and operation of the department. The internal structure of the department shall be established in accordance with ~~section~~ 82A-104(2).

(h) ~~Subject~~ subject to law, and the state merit system, if applicable, establish and make appointments to necessary subordinate positions, and abolish unnecessary positions;

(i) ~~Maintain~~ maintain a central office in Helena for the department, and such other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) ~~Subject~~ subject to law, and the state merit system, if applicable, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department;

(b) ~~Delegate~~ delegate any of the functions vested in the department head to subordinate employees;

(c) ~~Apply~~ apply for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions;

(d) ~~Enter~~ enter into agreements with federal, state, and local agencies necessary to carry out the department's functions."

Section 29. There is a new R.C.M. section that reads as follows:

Transition schedule — public education rules. Rules and policies of the board of public education and the state superintendent of public instruction are subject to 82-4204(3) on and after October 1, 1977. Any such rules and policies in effect on January 1, 1977, may be filed before October 1, 1977, for publication in the administrative code without being subject to the notice and hearing requirements of 82-4204(1).

Section 30. There is a new R.C.M. section that reads as follows:

Transition schedule — administration rules. Rules and policies of the department of administration not exempted from the Montana Administrative Procedure Act are subject to 82-4204(3) on and after October 1, 1977. The director of administration shall discontinue publication of the Montana administrative manual after that date but may continue the second and third volumes of that manual under the title of Statewide Budgeting and Accounting Manual. The director may file any rules published in the first volume of the Montana administrative manual as of January 1, 1977, with the

administrative code commissioner before October 1, 1977, without being subject to the notice and hearing requirements of 82-4204(1). The administrative code commissioner shall arrange with the director of administration for publication of the rules of the department of administration in a volume separable from the administrative rules of Montana for the convenience of state offices which do not wish to acquire the entire code.

Section 31. There is a new R.C.M. section that reads as follows:

Transition schedule — institutions rules. Rules and policies of the department of institutions relating to patients or inmates in a mental, medical, or eleemosynary institution are subject to 82-4204(3) on and after October 30, 1977. Any such rules in effect on January 1, 1977, may be filed before October 1, 1977, for publication in the administrative code without being subject to the notice and hearing requirements of 82-4204(1).

-End-

STATE OF MONTANA

REQUEST NO. 57-77

FISCAL NOTE

Amended

Form BD-15

In compliance with a written request received February 4, 19 77, there is hereby submitted a Fiscal Note for House Bill 77 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act for the general revision of the laws relating to administrative procedure.

ASSUMPTIONS:

1. Administrative Code will be published and up-dated in its present form at the same time as it is recodified and revised.
2. Method and frequency of publishing the register will be changed.
3. All members of the legislature will want copies of the Administrative Register. (Section 9 of House Bill 77).
4. Additional pages will need to be published in the Administrative Code if 3 agencies become subject to the APA (Section 29 of House Bill 77).
Additional pages will be published in the Register to accommodate Attorney General opinions (82-4206 (2) (c) of House Bill 77).
5. Additional FTEs will not be needed if funds for the revision and recodification are appropriated.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Expenditures under proposed law	\$74,266	\$62,989
Expenditures under current law	<u>56,992</u>	<u>57,491</u>
Increase in expenditures under proposed law*	<u>\$17,274</u>	<u>\$ 5,498</u>

*Does not include expenditures for revision and recodification, the costs for which may be substantial.

Richard L. Denny
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-7-77

STATE OF MONTANA

REQUEST NO. 57-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 12, , 19 77 , there is hereby submitted a Fiscal Note for House Bill 77 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF LEGISLATION:

An act for the General Revision of the laws relating to Administrative Procedure.

ASSUMPTIONS:

1. Revision and recodification of the Administrative Code is made mandatory by recodification of the Revised Codes of Montana for simultaneous publication and effective dates.
2. Existing Administrative Code Manual must be published and updated in its present form during the period of recodification and revision.
3. Major part of recodification of Administrative Code will be done in 1979 biennium.
4. The method and frequency of the register will be changed. Publication will probably occur as needed rather than on a fixed schedule.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Proposed Law		
Personal Services	\$115,749	\$118,093
Operating Expenses	<u>207,560</u>	<u>174,710</u>
Total expenditure under proposed law	\$323,309	\$292,803
Expenditure under current law	<u>56,992</u>	<u>57,491</u>
Increased expenditure under proposed law	<u>\$266,317</u>	<u>\$235,312</u>

LOCAL IMPACT:

None

LONG-RANGE IMPACT:

Total expenditures will decrease following revision, recodification, and publication of the new Administrative Code. Estimated total expenditures are \$254,571 in FY 80 and \$238,170 in FY 81.

Richard L. Zimney for
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-13-77

January 31, 1977
Page 10

REPRESENTATIVE CONROY:

On the 60 day limitation, would that preclude you from any other chance to file a claim. General discussion followed about the 60 day limitation, how it would work and how it would affect the claimant.

REPRESENTATIVE COURTNEY asked Mr. Neely. What are the statistics? Are the increased rates due to actual Montana cases or is it because of the national level?

MR. NEELY:

It is a combination of national and statewide data.

Discussion about page 24, section 31.

MR. NEELY:

We could strengthen the language and would be more than glad to do that, so that it is strictly voluntary.

REPRESENTATIVE EUDAILY:

On page 2, line 22, what does this mean, strictly voluntary, if offered.

MR. NEELY:

Some would, and some wouldn't and there is no way of knowing, if it is extremely widespread.

After some discussion the hearing closed on House Bill #374.

THE HEARING OPENED ON HOUSE BILL #77:

REPRESENTATIVE BARRETT, DISTRICT #48:

This is not a recodification bill although it does eliminate obsolete language. It is a general revision of the laws relating to administrative procedure. It was suggested that the APA be eliminated, but the committee feels that this is not the solution.

REPRESENTATIVE BARRETT introduced MR. TIPPEY, of the Administrative Code Committee who he said would explain the bill more fully and in greater detail. He started with page 1, section 1 and proceeded to go through the bill with the section by section analysis. (copy attached)

He mentioned there are 400 code sections which delegate the authority. He explained the register, what the yellow sheets are for and the white sheets and the set of instructions, which every month are sent out by the secretary of state.

PROPONENT, D. ROBERT LOHN, STAFF ATTORNEY-GOVERNOR'S OFFICE:
Generally speaking, we find no problems with the bill. There are a couple of minor modifications. The Department of Interior asks that it be extended to juveniles. The Department of Administration asked that I explain the impact the changes will have on them. We would like to have a definition of the rules. Such as, who pays for a telephone line and similar situations. A final thing that I would like to suggest is that the code commission leave the general powers with the secretary of state, Mr. Murray. We feel he is doing a good job.

PROPONENT, GENE PHILLIPS, PACIFIC POWER & LIGHT CO:
I think there should be an amendment. Section 82-4211. I think there should be hearings and appoint an examiner, a judge with the same qualifications as a district judge. On the whole I support this bill.

PROPONENT, CORBIN HOWARD, STAFF ATTORNEY-SUPERINTENDENT OF PUBLIC INSTRUCTION:
I would like to describe the effect this would have on this office. He presented the committee with copies of prepared testimony, (copy attached). I urge you not to include them in the boards and agencies affected by this bill.

OPPONENT, HARRIETT MELOG, BOARD OF PUBLIC EDUCATION:
We are asking you, would this then exclude the Board of Education? Our opposition to inclusion under the administrative procedure act is based simply on practicality. The Board of Public Education is a policy-making body. She presented a copy of her statement to the committee. (copy attached)

REPRESENTATIVE BURNETT:
I think we are on the right track with this committee. It would give us a much better watch-dog control.

REPRESENTATIVE HOLMES:
Could the sections be included so they would not have to go through the hearing process?

MR. TIPPEY:
We finally got a compiled record which will make the difference.

The hearing closed on House Bill #77.

THE HEARING OPENED ON HOUSE BILL #464:

REPRESENTATIVE HARPER, DISTRICT #30:
The bill would establish a full-time board of pardons, and provide for the transition from the old to the new board, and provide the

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 12, 1977

The meeting of this committee was called to order on the above date by Senator Turnage, Chairman, at 9:40 a.m. in Room 415 of the State Capitol Building.

ROLL CALL:

All committee members were present for this meeting except Senator Warden who was excused.

WITNESSES PRESENT TO TESTIFY:

Rep. Barrett - District 48, Lewistown
Roger Tippy - Staff attorney, Administrative Code Committee
for last biennium

Rod Gudgel - MNHA, MSPA & MOA
Robert Lohn - Governor's staff, attorney
JoAnn Woodgerd - office of the Secretary of State
George Losleben - State Personnel Division, staff counsel
Dorris Dietzen - office of Secretary of State

CONSIDERATION OF HOUSE BILL 77:

Rep. Barrett of Lewistown, sponsor of HB 77, said that this bill simply recodifies the Montana Administrative Codes.

Roger Tippy of the office of the Administrative Code Commissioner, said that the administrative code committee oversaw rule making on a month by month basis during the last biennium. He explained the changes made in H.B. 77 section by section.

Rod Gudgel, representing the Montana Nursing Home Assn. and the Montana State Pharmaceutical Assn., was the first proponent of H.B. 77 to testify. He said that they support this bill because there are abuses to the rule making process.

Bob Lohn, attorney on the Governor's staff, said that they support the bill and that he feels that it is necessary for a change to be made in the personnel rules. It was agreed that he would write the amendment for the committee and submit it for their consideration.

JoAnn Woodgerd of the Secretary of State's office was the next proponent to testify. She said that she was concerned about several things in the bill. She went over these with the committee.

Dorris Dietzen of the Secretary of State's office said that they have no money to print the code updates more than once a month.

George Losleben, staff counsel, State Personnel Division, said that he believes there is a hidden cost in the fiscal note, but that he thinks it is a better policy to have all state agencies put in their own input.

Senator Turnage, Chairman, thanked Roger Tippy for the help he has given the code committee in drafting this bill.

Senator Olsen moved to amend H.B. 77 by adding a savings clause. The motion carried unanimously.

Senator Towe moved the adoption of the attached amendments with the exception of amendment #9 which was moved by Senator Olsen as previously stated. (See attachment #1) The motion carried unanimously. He then moved that H.B. 77 as amended BE CONCURRED IN. The motion carried unanimously.

EXECUTIVE SESSION

At this time the committee went into executive session on the following bills:

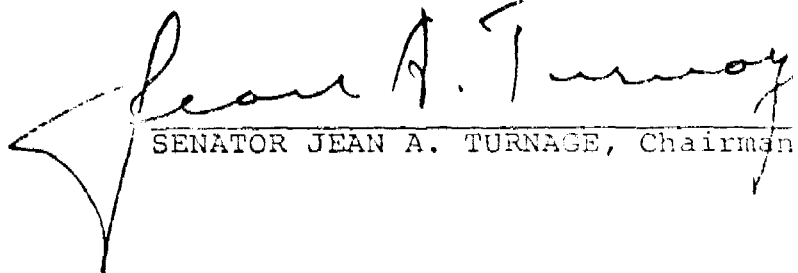
H.B. 226 - Lon Maxwell, Judiciary Committee counsel, proposed some amendments to this bill. Senator Roberts moved the adoption of the discussed amendments. (See attachment #2) The motion carried unanimously. Senator Roberts then moved that H.B. 226 as amended BE CONCURRED IN. The motion carried unanimously.

HJR 7 - Senator Roberts moved that HJR 7 BE NOT CONCURRED IN. The motion carried unanimously.

HJR 3 - Senator Regan moved that HJR 3 BE NOT CONCURRED IN. The motion carried with Senator Roberts voting "No".

HJR 2 - Senator Regan moved that HJR 2 BE NOT CONCURRED IN. The motion carried with Senator Roberts abstaining.

There being no further business, the committee adjourned at 11:00 a.m..


SENATOR JEAN A. TURNAGE, Chairman

Respectfully report as follows: That.....HOUSE..... Bill No. 27,
the Third Reading Bill, be amended as follows:

1. Amend page 19, section 11, line 9.

Following: "code)."

Insert: "However, this does not require the republication of rules
which have been published under the name 'Montana Administrative Code'.
The"

2. Amend page 24, section 11, line 19.

Following: ~~XXXXXXXXXXXX~~ "COMMITTEE"

Insert: "but not more often than twice a month"

3. Amend page 35, section 19, lines 9 through 11.

Following: "hearing"

Strike: "unless the applicable statute provides for a trial de novo on
appeal to the district court"

4. Amend page 42, section 27, line 14.

Following: "new"

Strike: "R.C.M."

~~DUPLICATE~~

STATE PUB. CO.
Helena, Mont.

~~XXXXXXXXXX~~

A.D. 1977

Page 4.

5. Amend page 42, section 28, line 24.

Following: "new"

Strike: "R.C.M."

6. Amend page 43, section 28, lines 7 and 8.

Following: line 6

~~XXXXXXXXXX~~ Strike: "second and third volumes of that manual under the title
of Statewide Budgeting and Accounting Manual"

Insert: "publication of this material in manual form under a new title
not containing the word 'administrative'"

7. Amend page 43, section 29, line 19.

Following: "new"

Strike: "R.C.M."

8. Amend page 43, section 29, line 25.

Following: line 24

Strike: "30"

Insert: "1"

9. Amend page 44, section 29, line 3.

Following: line 3

Insert: "Section 30. Savings clause. Section 82-4220(3), ^{R.C.M. 1947} does not apply
to a contested case for which the initial notice of hearing was issued
prior to March 15, 1977."

guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

(2) Any person violating 74-607 through 74-610, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance charge, delinquency or collection charge on the contract."

Approved April 5, 1977.

CHAPTER NO. 285

AN ACT FOR THE GENERAL REVISION OF THE LAWS RELATING TO ADMINISTRATIVE PROCEDURE; AMENDING SECTIONS 82-4201 THROUGH 82-4208, 82-4212, 82-4213, 82-4215, 82-4216, 82-4217, 82-4220 THROUGH 82-4223, 82-4227 THROUGH 82-4229, AND 82A-107, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4201, R.C.M. 1947, is amended to read as follows:

"**82-4201. Short title.** This part (82-4201 through 82-4225) shall be known and may be cited as the "Montana Administrative Procedure Act."

Section 2. Section 82-4202, R.C.M. 1947, is amended to read as follows:

"**82-4202. Definitions.** For purposes of this part, the following definitions apply:

(1) "Agency" means any agency, as defined in 82-4227, of the state government, except that the provisions of this part do not apply to the following:

(a) the state board of pardons, except that the board shall be subject to the requirements of 82-4203 and 82-4205 and its rules shall be published in the Montana administrative code and register;

(b) the supervision and administration of any penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(c) the board of regents and the Montana university system;

(d) the financing, construction, and maintenance of public works.

(2) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. Substantive rules are either legislative rules, which if adopted in accordance with this part and under expressly delegated authority have the force of law and when not so adopted are invalid, or

adjective or interpretive rules, which may be adopted in accordance with this part and under express or implied authority to codify an interpretation of a statute although such interpretation lacks the force of law. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) declaratory rulings issued pursuant to 82-4218;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of such rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of such rules and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with 82-4205 and shall be published in the Montana administrative code.

(3) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to rate making, price fixing, and licensing.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(5) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(6) "Party" means any person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(7) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public organization of any character other than an agency."

Section 3. Section 82-4203, R.C.M. 1947, is amended to read as follows:

"**82-4203. Rules describing agency organization and procedures — public inspection of rules — model rules.** (1) In addition to other rule-making requirements imposed by law, each agency shall:

(a) adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public

may obtain information or make submissions or requests. The notice and hearing requirements contained in 82-4204 do not apply to adoption of a rule relating to a description of its organization.

(b) *adopt* rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;

(c) *make* available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;

(d) *upon* request of any person or agency, provide a copy of any rule. Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(2) No agency rule is valid or effective against any person or party whose rights have been substantially prejudiced by an agency's failure to comply with the public inspection requirement herein.

(3) The attorney general shall prepare a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide in fulfilling the requirements of 82-4203(1). The attorney general shall add to, amend, or revise the model rules from time to time as he *considers* necessary for the proper guidance of agencies. The model rules and additions, amendments, or revisions thereto shall be appropriate for the use of as many agencies as is practicable and shall be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules *does* not relieve the agency from following the rule-making procedures required by this part."

Section 4. Section 82-4203.1, R.C.M. 1947, is amended to read as follows:

"82-4203.1. Legislative review of rules. (1) The legislature may, by joint resolution, repeal any rule in the Montana administrative code. If a rule is repealed, the legislature shall, in the joint resolution, state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the joint resolution. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

(2) The legislature may also, by joint resolution, direct a change to be made in any rule in the Montana administrative code or direct the adoption of an additional rule. If a change in any rule or the adoption of an additional rule is directed to be made, the legislature shall, in the joint resolution, state the nature of the change or the additional rule to be made and its reasons therefor. The agency shall, in the manner provided in the Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction.

(3) Rules made by agencies and changes in rules directed by the legislature under subsection (2) of this section, shall conform and be pursuant to statutory authority."

Section 5. Section 82-4203.2, R.C.M. 1947, is amended to read as follows:

"82-4203.2. Administrative code committee — appointment and term of members — officers. The administrative code committee consists of four members of the senate and four members of the house of representatives appointed before the 60th legislative day of the regular session in the same manner as standing committees of the respective houses are appointed. A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the committee. No more than two of the appointees of each house may be members of the same political party. A member of the committee shall serve until his term of office as a legislator ends or until the end of the 60th legislative day of the session of the biennium following his appointment or until his successor is appointed, whichever occurs first. The committee shall elect one of its members as chairman and such other officers as it *considers* necessary."

Section 6. Section 82-4203.4, R.C.M. 1947, is amended to read as follows:

"82-4203.4. Appointment of employees and consultants. The administrative code committee may *retain* whatever employees, consultants, or counsel as are necessary to carry out the provisions of this *part* and to advise the publisher in relation to the text and legal authority of the material published in the register or the code, within the limitations of legislative appropriations."

Section 7. Section 82-4203.5, R.C.M. 1947, is amended to read as follows:

"82-4203.5. Powers of the committee. (1) The committee shall review all proposed rules *filed with the secretary of state* and may:

(a) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule when a rule-making hearing will not be held in accordance with the provisions of 82-4204;

(b) prepare recommendations for the adoption, amendment, or rejection of a rule and submit oral or written testimony at a rule-making hearing; or

(c) *require* that a rule-making hearing be held in accordance with the provision of 82-4204.

(2) The committee shall prepare a report to the legislature at least once each biennium and may recommend amendments to the *Montana* Administrative Procedure Act or the repeal, amendment, or adoption of a rule as provided in 82-4203.1."

Section 8. Section 82-4204, R.C.M. 1947, is amended to read as follows:

"82-4204. Adoption, amendment, or repeal of rules — emergency

rules. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(a) *give* written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, *rationale for the intended action*, and the time when, place where, and manner in which interested persons may present their views thereon. The notice shall be filed with the secretary of state for publication in the Montana administrative register as provided in 82-4206(2) and mailed to persons who have made timely requests to the agency for advance notice of its rule-making proceedings. The notice shall be published and mailed at least 30 days in advance of the agency's intended action. If any statute *provides* for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case *may* the notice period be less than 30 days or more than 6 months.

(b) *afford* interested persons at least 20 days' notice of a hearing and 28 days to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing shall be granted if requested by either 10% or 25 of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected. An *agency may continue a hearing date for cause*. Contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing herein *alters* that requirement. The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(2) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 20 days' notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, but the adoption of an identical rule under subsections (1)(a) and (1)(b) of this section is not precluded. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare is subject to judicial review.

(3) No rule is valid unless adopted in substantial compliance with subsections (1) or (2) of this section *and within 6 months of the publishing of notice thereof*.

(4) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule making. The powers of the committees shall be advisory only. Nothing herein shall relieve the agency from following rule-making procedures required by this *part*.

(5) Rules *may* not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language. Each rule shall include a citation of authority pursuant to which it, or any part thereof, is adopted.

(6) Each agency shall at least annually review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed."

Section 9. There is a new R.C.M. section to be codified within the Montana Administrative Procedure Act numbered 82-4204.1, that reads as follows:

82-4204.1. Authority for rules. (1) Except as provided in 82-4203, nothing in this part confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any rule. To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(2) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

Section 10. Section 82-4205, R.C.M. 1947, is amended to read as follows:

"82-4205. Filing of rules — effective date of rules. Each agency shall file with the secretary of state a copy of each rule adopted by it. Each rule shall become effective after publication in the Montana administrative register as provided in 82-4206, except that:

(1) *if* a later date is required by statute or specified in the rule, the later date shall be the effective date;

(2) *subject* to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the secretary of state or at a stated date following publication in the Montana administrative register if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them.

(3) The secretary of state may prescribe a format, style, and arrangement for rules which are filed pursuant to this *part* and may refuse to accept the filing of any rule that is not in compliance therewith. He shall keep and maintain a permanent register of all rules filed (including superseded and repealed rules), which shall be open to public inspection, and shall provide copies of any rule upon request of any person or agency.

Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing such copies."

Section 11. Section 82-4206, R.C.M. 1947, is amended to read as follows:

"82-4206. Publication and distribution of rules and notices. (1) The secretary of state shall compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish all rules filed pursuant to this part in a publication which shall be known as the *administrative rules of Montana* (herein referred to as the code). However, this does not require the republication of rules which have been published under the name "*Montana Administrative Code*". The secretary of state shall supplement, revise, and publish the code, or any part thereof, as often as he considers necessary. He may include such editorial notes, cross references, and other matter as he and the administrative code committee consider desirable or advantageous. He shall publish supplements to the code at such times and in such form as he considers appropriate.

(2) The secretary of state shall each month or at more frequent intervals compile and publish the Montana administrative register (herein referred to as the register). The register shall contain three sections, a rules section, a notice section, and an interpretation section.

(a) The rules section of the register shall contain all rules filed since the compilation and publication of the preceding issue of the register together with the concise statement of reasons required under 82-4204(1)(b).

(b) The notice section of the register shall contain all rule-making notices filed with the secretary of state pursuant to 82-4204 since the compilation and publication of the preceding register.

(c) The interpretation section of the register shall contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(d) Each issue of the register shall contain the issue number and date of the register and a table of contents. Each page of the register shall contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to the Montana administrative code.

(3) The secretary of state, with the consent of the adopting agency, may omit from the code or register any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule merely incorporates by reference a model code, federal agency rule, or like publication made available on application to the agency and if the code or register contains a notice stating the citation and general subject matter of the omitted rule and stating how a copy may be obtained.

(4) The code shall be arranged, indexed, and printed or duplicated in such manner as to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the secretary of state for the printing of as many copies of such separate publications as it may require. The cost of any such separate publications shall be paid by the agency.

(5) The secretary of state shall distribute copies of the code and supplements or revisions thereto without charge to the following:

- (a) attorney general, one copy;
- (b) clerk of each court of record of this state, one copy;
- (c) clerk of United States district court for the district of Montana, one copy;
- (d) clerk of United States court of appeals for the ninth circuit, one copy;
- (e) each county clerk of this state, for use of county officials and the public, one copy, which may be maintained in a public library in the county seat or in the county offices;
- (f) state law library, one copy;
- (g) state historical society, one copy;
- (h) each unit of the Montana university system, one copy;
- (i) law library of the university of Montana, one copy;
- (j) legislative council, three copies;
- (k) library of congress, one copy;
- (l) state library, one copy.

(6) The secretary of state, clerk of each court of record in the state, clerk of each county in the state, and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of the code, including supplements or revisions thereto. Such persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall also maintain a permanent set of the registers.

(7) The secretary of state shall make copies of and subscriptions to the code and supplements or revisions thereto and the register available to any person at prices fixed to cover publication and mailing costs.

(8) The secretary of state shall determine the cost of supplying copies of the code and supplements or revisions thereto and the register. Such cost shall be the approximate cost of printing or duplicating and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of the code and supplements or revisions thereto and the register.

(9) The secretary of state shall publish all notices, rules, and interpretations filed with him, at least once a month or as directed by the administrative code committee but not more often than twice a month, in a publication called the Montana administrative code register. He shall send the register without charge to each person listed in 82-4206(5) and to each member of the legislature requesting the same. He shall send the register to any other person who pays a subscription fee which he shall fix in consultation with the administrative code committee.

(10) *The secretary of state shall deposit all fees he collects in the general fund.*

(11) *The secretary of state may charge agencies a filing fee for all material to be published in the code or register based on an estimated cost of printing, which he shall fix in consultation with the administrative code committee."*

Section 12. Section 82-4207, R.C.M. 1947, is amended to read as follows:

"82-4207. Petition for adoption of rules. An interested person or, when the legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with 82-4204."

Section 13. Section 82-4208, R.C.M. 1947, is amended to read as follows:

"82-4208. Judicial notice of rules. The courts shall take judicial notice of any rule filed and published under the provisions of this part."

Section 14. Section 82-4212, R.C.M. 1947, is amended to read as follows:

"82-4212. Examination of evidence by agency — proposed orders. When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, may not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing unless he becomes unavailable to the agency. If the person who conducted the hearing becomes unavailable to the agency, proposed findings of fact may be prepared by a person who has read the record only if the demeanor of witnesses is considered immaterial by all parties. The parties may waive compliance with this section by written stipulation."

Section 15. Section 82-4213, R.C.M. 1947, is amended to read as follows:

"82-4213. Final orders — notification. (1) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the

underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record. Each conclusion of law shall be supported by authority or by a reasoned opinion.

(2) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 82-4218. No such agency decision or order is valid or effective against any person or party nor may it be invoked by the agency for any purpose until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order."

Section 16. Section 82-4215, R.C.M. 1947, is amended to read as follows:

"82-4215. Licenses. (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, *transfer*, or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this part concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(3) No revocation, suspension, annulment, withdrawal, or amendment of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined."

Section 17. Section 82-4216, R.C.M. 1947, is amended to read as follows:

"82-4216. Judicial review of contested cases. (1) (a) A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this part. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) A party who proceeds before an agency under the terms of a particular statute shall not be precluded from questioning the validity of that statute on judicial review, but such party may not raise any other question not raised before the agency, unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Proceedings for review shall be instituted by filing a petition in district court within 30 days after service of the final decision of the agency or if a rehearing is requested, within 30 days after the decision thereon. Except as otherwise provided by statute, the petition shall be filed in the district court for the county where the petitioner resides or has his principal place of business or where the agency maintains its principal office. Copies of the petition shall be promptly served upon the agency and all parties of record.

(b) The petition shall include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in subsection (7) of this section upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled, and the demand for relief may be in the alternative.

(3) Unless otherwise provided by statute, the filing of the petition shall not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms which it considers proper.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(6) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(7) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (g) because findings of fact, upon issues essential to the decision, were not made although requested."

Section 18. Section 82-4217, R.C.M. 1947, is amended to read as follows:

"82-4217. Appeals. An aggrieved party may obtain review of a final judgment of a district court under this *part* by appeal to the supreme court within 60 days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process:

- (1) if appeal is taken from a judgment of the district court affirming an agency decision, the agency decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for 20 days from the date of filing of the notice;
- (2) if appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise."

Section 19. Section 82-4220, R.C.M. 1947, is amended to read as follows:

"82-4220. Subpoenas and enforcement — compelling testimony.

- (1) An agency conducting any proceeding subject to this *part* shall have the power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers, documents, and other objects as may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may, and upon request of any party appearing in a contested case shall, issue subpoenas for witnesses or subpoenas duces tecum. The method for service of subpoenas, witness fees, and mileage shall be the

same as required in civil actions in the district courts of the state. Except as otherwise provided by statute, witness fees and mileage shall be paid by the party at whose request the subpoena was issued.

(2) In case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a proceeding before the agency, the agency may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If the agency fails or refuses to seek enforcement of a subpoena issued at the request of a party or to compel the giving of testimony *considered* material by a party, the party may make such application. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of such order shall be punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district courts. If another method of subpoena enforcement or compelling testimony is provided by statute, it may be used as an alternative to the method provided for in this section.

(3) *Each agency shall provide in its rules of practice for discovery prior to a contested case hearing.*"

Section 20. Section 82-4221, R.C.M. 1947, is amended to read as follows:

"82-4221. Representation. Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel. In a proceeding before an agency, every party shall be accorded the right to appear in person or by or with counsel but this *part* shall not be construed as requiring an agency to furnish counsel to any such person."

Section 21. Section 82-4222, R.C.M. 1947, is amended to read as follows:

"82-4222. Service. Except where a statute expressly provides to the contrary, service in all agency proceedings subject to the provisions of this *part* and in proceedings for judicial review thereof shall be as prescribed for civil actions in the district courts."

Section 22. Section 82-4223, R.C.M. 1947, is amended to read as follows:

"82-4223. Construction and effect. Nothing in this *part* shall be *considered* to limit or repeal requirements imposed by statute or otherwise recognized law. No subsequent legislation shall be *considered* to supersede or modify any provision of this *part*, whether by implication or otherwise, except to the extent that such legislation shall do so expressly."

Section 23. Section 82-4227, R.C.M. 1947, is amended to read as follows:

"82-4227. Definitions. As used in this *chapter*.

(1) "agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, *determine contested cases, or enter into contracts* except:

(a) the legislature and any branch, committee, or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; or

(b) declaratory rulings as to the applicability of any statutory provision or of any rule.

(3) "agency action" means the whole or a part of an agency rule, license, order, or contract or the equivalent or denial thereof."

Section 24. Section 82-4228, R.C.M. 1947, is amended to read as follows:

"82-4228. Agency requirements. (1) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures shall assure adequate notice and assist public participation before a final *agency action is taken* that is of significant interest to the public.

(2) An agency shall be *considered* to have complied with the notice provisions of this *section* if:

(a) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 69, chapter 65;

(b) a proceeding is held as required by the Montana Administrative Procedure Act;

(c) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(d) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision prior to a final decision on a matter.

(3) Procedures for assisting public participation shall include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

(4) The provisions of this section do not apply to:

- (a) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;
- (b) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or
- (c) a decision involving no more than a ministerial act.

(5) Each agency shall adopt guidelines for its programs, which guidelines shall provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) of this section. These guidelines shall be adopted as rules and published in a manner which may be provided to a member of the public upon request."

Section 25. Section 82-4229, R.C.M. 1947, is amended to read as follows:

"82-4229. Enforcement. The district courts of the state have jurisdiction to set aside an agency decision under 82-4228 upon petition of any person whose rights have been prejudiced, made within 30 days of the date of the decision."

Section 26. Section 82A-107, R.C.M. 1947, is amended to read as follows:

"82A-107. Duties and powers of department heads. (1) Except as otherwise provided by law, each department head shall:

- (a) *supervise*, direct, account for, organize, plan, administer, and execute the functions vested in the department by this title or other law;
- (b) *establish* the policy to be followed by the department and employees;
- (c) *compile* and submit reports and budgets for the department as required by law or requested by the governor;
- (d) *provide* the governor with any information that he requests at any time on the operation of the department;
- (e) *represent* the department in communications with the governor;
- (f) *prescribe* rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices, and the governor may not prescribe rules for them. *The rules described in this subsection are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public. This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative Procedure Act.*

(g) *subject* to the approval of the governor, establish the internal organizational structure of the department, and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department shall be established in accordance with 82A-104(2).

(h) *subject* to law and the state merit system, if applicable, establish and make appointments to necessary subordinate positions and abolish unnecessary positions;

(i) *maintain* a central office in Helena for the department and such other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) *subject* to law and the state merit system, if applicable, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department;

(b) *delegate* any of the functions vested in the department head to subordinate employees;

(c) *apply* for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions;

(d) *enter* into agreements with federal, state, and local agencies necessary to carry out the department's functions."

Section 27. There is a new section that reads as follows:

Transition schedule — public education rules. Rules and policies of the board of public education and the state superintendent of public instruction are subject to 82-4204(3) on and after October 1, 1977. Any such rules and policies in effect on January 1, 1977, may be filed before October 1, 1977, for publication in the administrative code without being subject to the notice and hearing requirements of 82-4204(1).

Section 28. There is a new section that reads as follows:

Transition schedule — administration rules. Rules and policies of the department of administration not exempted from the Montana Administrative Procedure Act are subject to 82-4204(3) on and after October 1, 1977. The director of administration shall discontinue publication of the Montana administrative manual after that date but may continue the publication of this material in manual form under a new title not containing the word "administrative". The director may file any rules published in the first volume of the Montana administrative manual as of January 1, 1977, with the secretary of state before October 1, 1977, without being subject to the notice and hearing requirements of 82-4204(1). The secretary of state shall arrange with the director of administration for publication of the rules of the department of administration in a volume separable from the administrative rules of Montana for the convenience of state offices which do not wish to acquire the entire code.

Section 29. There is a new section that reads as follows:

Transition schedule — institutions rules. Rules and policies of the department of institutions relating to patients or inmates in a mental, medical, or eleemosynary institution are subject to 82-4204(3) on and after October 1, 1977. Any such rules in effect on January 1, 1977, may be filed before October 1, 1977, for publication in the administrative code without being subject to the notice and hearing requirements of 82-4204(1).

Section 30. **Saving clause.** Section 82-4220(3), R.C.M. 1947, does not apply to a contested case for which the initial notice of hearing was issued prior to March 15, 1977.

Approved April 5, 1977.

CHAPTER NO. 286

AN ACT TO AMEND SECTIONS 4-1-407, 32-3403, 68-1901, 79-306, 79-1401, 84-5606.6, AND 84-723, R.C.M. 1947, RELATING TO THE DEPOSIT OF MONEYS IN THE STATE TREASURY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4-1-407, R.C.M. 1947, is amended to read as follows:

"4-1-407. Revenue to be paid to state treasurer — disposition of revenue. Except as provided in section 4-1-408 of this code, all fees, charges, taxes and revenues collected by or under authority of the Montana department, shall be *deposited with* the state treasurer. He shall deposit *the* funds to the credit of the state general fund."

Section 2. Section 32-3403, R.C.M. 1947, is amended to read as follows:

"32-3403. Disposition of funds collected. The department of justice shall retain five per cent (5%) of the funds collected in payment of the trip fees to defray costs of administration. The remaining ninety-five per cent (95%) shall be *transferred*, on or before the fifteenth day of each month after collection, to the credit of the department of highways."

Section 3. Section 68-1901, R.C.M. 1947, is amended to read as follows:

"68-1901. Management of fund. The retirement fund shall be managed as follows:

(1) The board of administration shall have exclusive control of the administration of the fund except as otherwise provided.

(2) The fund shall be invested by the state board of investments as part of the long-term investment fund.

(3) The department of administration shall deposit in the state treasury all amounts received by it as provided in this act.

(4) The state treasurer shall be custodian of the retirement fund, subject to the exclusive control of the board of administration as to the administration thereof and the board of investments as to the investment thereof.

(5) Interest earned on any cash deposit in a bank by the state treasurer and income on other assets constituting a part of the fund shall be paid into the fund as received. Income, of whatever nature, earned on the retirement fund during any fiscal year, in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

(6) Except as herein provided, no member and no employee of the department of administration shall have any interest direct, or indirect, in the making of any investment, or in the gains or profits accruing therefrom. And no member or employee of the department directly or indirectly, for himself or as an agent or partner of others, may borrow any of its funds or deposits, nor shall any member or employee in any manner use the same except to make such current and necessary payments as are authorized by the department nor shall any member or employee of the department become an endorser or surety as to or in any manner an obligor for investments for the retirement system."

Section 4. Section 79-306, R.C.M. 1947, is amended to read as follows:

"79-306. State treasurer as treasurer of state agencies — deposits of moneys. (1) The state treasurer is designated the treasurer of every state agency and institution.

(2) All state agencies and institutions shall deposit all moneys, credits, evidences of indebtedness, and securities either in banks, building and loan associations or savings and loan associations located in the city or town in which the agencies and institutions are situated if there is a qualified bank, building and loan association or savings and loan association in the city or town as designated by the state treasurer with the approval of the board of investments, or with the state treasurer. Such banks, building and loan association or savings and loan association shall pledge securities sufficient to cover the deposits at all times, and the deposits shall be made in the name of the state treasurer, and shall be subject to withdrawal at his option, and shall draw interest as other state moneys, in accordance with the provisions of sections 79-301 and 79-302.

(3) Nothing in this chapter shall impair or otherwise affect any covenant entered into pursuant to law by any agency or institution respecting the segregation, deposit, and investment of any revenues or funds pledged for the payment and security of bonds or other obligations authorized to be issued by such agency, and all such funds shall be deposited and invested in accordance with such covenants notwithstanding any provision of this chapter.

(4) All moneys, credits, evidences of indebtedness, and securities received by a state agency or institution shall be deposited either with the state treasurer or in a depository approved by the state treasurer each day